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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 150826781-5781-01]**

**RIN 0648-BF33**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; 2016 Red Snapper  
Commercial Quota Retention**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). If implemented, this proposed rule would withhold 4.9 percent of the 2016 red snapper commercial quota prior to the annual distribution of red snapper allocation to red snapper Individual Fishing Quota Program (IFQ) shareholders on January 1, 2016. The purpose of this proposed rule is to allow the

allocations being established through Amendment 28 to the FMP (Amendment 28) to be effective for the 2016 fishing year.

**DATES:** Written comments must be received by [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2015-0121" by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0121](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0121), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Richard Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the

sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office Web site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/index.html).

**FOR FURTHER INFORMATION CONTACT:** Richard Malinowski, NMFS Southeast Regional Office, telephone: 727-824-5305, e-mail: [rich.malinowski@noaa.gov](mailto:rich.malinowski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

## **Background**

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to achieve on a continuing basis the optimum yield from federally managed fish stocks. This mandate is intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly

with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

In recent years, the Council has expressed its intent to evaluate and possibly adjust the allocation of reef fish resources between the commercial and recreational sectors. At its August 2015 meeting, the Council approved Amendment 28 for submission to the Secretary of Commerce (Secretary) for review and implementation. Amendment 28 would reallocate 352,000 lb (159,665 kg), round weight, 317,117 lb (143,842 kg), gutted weight of red snapper from the commercial sector to the recreational sector. This is equal to 4.9 percent of the current red snapper commercial quota.

This proposed rule would allow for the implementation of Amendment 28 in early 2016. While the recreational fishing season does not open until June 1 each year, NMFS distributes IFQ allocation to the shareholders on January 1 each year. After NMFS distributes the red snapper commercial quota to shareholders, it cannot be effectively recalled. If Amendment 28 is approved, it is unlikely that NMFS would be able to implement the reallocation until after the IFQ program's annual distribution of red snapper quota to the commercial sector on January 1, 2016. Therefore, without the management measures in this proposed rule, the reallocation could not occur until 2017.

### **Management Measures Contained in this Proposed Rule**

This proposed rule would withhold distribution of 4.9 percent of the 2016 red snapper commercial quota (352,000 lb (159,665 kg), round weight; 317,117 lb (143,842 kg), gutted weight) when allocation to the red snapper IFQ shareholders is released on January 1, 2016. If NMFS does not implement Amendment 28, NMFS would distribute the withheld 4.9 percent of the 2016 IFQ allocation of red snapper to shareholders based on the shares held as of the date of distribution.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework amendment, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this

determination is as follows:

The purpose of this proposed rule is to withhold 4.9 percent of the Gulf commercial red snapper quota (352,000 lb (159,665 kg), round weight; 317,117 lb (143,842 kg), gutted weight) to ensure that the allocations established through Amendment 28, and scheduled to be implemented in 2016, if approved by the Secretary, are effective for the 2016 fishing year. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

NMFS expects this proposed rule, if implemented, to directly affect commercial vessels that harvest red snapper in the Gulf. Based on commercial logbook data, over the period of 2009-2013, an average of 353 vessels per year recorded commercial red snapper harvests. The maximum number of vessels with recorded commercial red snapper harvests during this period was 375 in 2010. However, in 2010, 384 vessels were identified in the red snapper IFQ on-line account program, which tracks activity in the Red Snapper Limited Access Privilege Program. This system, however, is not the official record for trip harvests of all species by vessels with commercial harvests of red snapper, nor does it capture all landings, or associated revenues, from all species harvested on all trips by vessels that also harvest red snapper. Therefore, data from both sources

are used for this analysis to estimate the number of potentially affected entities. As a result, this proposed rule would be expected to apply to 353-384 commercial fishing vessels. The average annual gross revenue from all species harvested on all trips by the vessels identified with recorded red snapper harvests in logbook data over the period 2009-2013 (353 vessels) was approximately \$110,000 (2013 dollars).

NMFS has not identified any other entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. All commercial fishing vessels expected to be directly affected by this proposed rule are determined to be small business entities.

This proposed rule would withhold from distribution 4.9 percent or 352,000 lb (159,665 kg), round weight; 317,117 lb (143,842 kg), gutted weight, of the 2016 Gulf red snapper commercial quota, valued at approximately \$1.46 million (\$4.75

median ex-vessel price per lb gutted weight, minus the 3-percent IFQ program cost recovery fee, all vessels; 2013 dollars). This is equivalent to the amount of red snapper quota proposed to be reallocated from the commercial sector to the recreational sector in proposed Amendment 28. Across all vessels (353-384 vessels), this amount of quota would be equivalent to an average of approximately 826-898 lb (375-407 kg), gutted weight, of red snapper per vessel, valued at approximately \$3,800-\$4,100. Thus, the proposed quota withholding in this framework action would result in a reduction in ex-vessel revenue in 2016 to the entities in this fishery; however, this reduction is consistent with the analysis and expected economic effects of Amendment 28, which projects a reduction in red snapper commercial quota, and associated economic benefits to commercial fishermen, beginning in 2016. The reallocation would, however, be expected to result in an increase in economic benefits to the recreational sector. If approved by the Secretary, final rulemaking to implement the allocation change proposed by Amendment 28 cannot occur until after January 1, 2016, whereas distribution of the commercial quota to IFQ shareholders occurs at the start of each fishing year to allow vessels to begin harvesting red snapper on January 1. After the annual red snapper quota is distributed to shareholders, it cannot be



effectively recalled. Thus, to ensure the effects of Amendment 28 are realized in 2016, NMFS is withholding from distribution the commensurate amount of quota equivalent to the amount reallocated in Amendment 28 for the 2016 fishing season. If NMFS implements the proposed rulemaking and the reallocation in Amendment 28, then the effects of the reduced commercial quota, including this proposed withholding, will be attributable to and analyzed with Amendment 28's rulemaking. If NMFS does not implement the proposed reallocation in Amendment 28, then the portion of the quota withheld through this framework action will be distributed as soon as possible to the appropriate shareholders. Because this allocation would be available later in the fishing year, a reduction in normal total revenue (disruption of the timing of harvest may reduce the price and total revenue received), alteration of the flow of receipts, and disruption of normal business operation may occur. However, these effects would be expected to be minor because only a small portion of the available quota (4.9 percent) would be affected for only a portion of the year.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would not have a significant adverse economic effect on a substantial number of small entities.

**List of Subjects in 50 CFR Part 622**

Commercial, Fisheries, Fishing, Gulf of Mexico,  
Recreational, Red snapper, Reef fish.

Dated: October 14, 2015

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622  
is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH  
ATLANTIC**

1. The authority citation for part 622 continues to read  
as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.39, add paragraphs (a) (1) (i) (B) (1) and (2) to  
read as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) \* \* \*

(1) NMFS will withhold distribution of 4.9 percent of the 2016 IFQ allocation of red snapper commercial quota on January 1, 2016, totaling 352,000 lb (159,665 kg), round weight, of the 2016 red snapper commercial quota specified in § 622.39(a)(1)(i)(B).

(2) As determined by NMFS, remaining 2016 IFQ allocation of red snapper will be distributed to the current shareholders based on their current shares held as of the date of distribution.

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